

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of the California Public Utilities)	CC Docket No. 99-200
Commission for Authority to Implement)	DA 03 - 3262
Technology-Specific Overlays)	

To: Wireline Competition Bureau

OPPOSITION OF VERIZON WIRELESS

Verizon Wireless opposes the California Public Utilities Commission's ("CPUC") new request for authority to implement two specialized overlays ("SOs"). Under the CPUC proposal, these two new NPAs would together encompass the entire state of California with one NPA overlapping the fifteen existing NPAs¹ in southern California and the other overlapping the ten existing NPAs² in northern California. In 2002, the CPUC filed and then withdrew a somewhat similar petition requesting delegated authority to implement a SO over several NPAs in southern California.³ Verizon Wireless opposed that petition because it failed to meet the evidentiary requirements for justifying SOs and sought to impose the most harmful aspects of SOs, take-backs and a permanent dialing disparity, without meeting the Commission's high standard for doing so.⁴ For reasons similar to those presented in opposition to the CPUC's prior petition, Verizon Wireless urges the FCC

¹ NPAs: 760/559/661/805/619/858/818/213/310/323/562/626/714/949/909

² NPAs: 530/707/415/510/925/650/408/831/209/916

³ See *Petition of the California Public Utilities Commission and the People of the State of California for Authority to Implement Technology-Specific Overlay Area Codes and Request for Expedited Treatment* (filed September 27, 2002).

⁴ *Numbering Resource Optimization*, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, 17 FCC Rcd 252 (2001) ("*Third NRO Order*") at ¶ 80.

to reject the current proposal as contrary to the public interest and inconsistent with FCC guidance on this issue.

Verizon Wireless also opposes the CPUC's latest petition as a transparent effort by the CPUC to justify delaying implementation of needed area code relief. The filing of the SO Petition was specifically cited in: (1) the CPUC's recent decision to again delay area code relief for the 310 NPA;⁵ and (2) in the alternate decision presented by CPUC Commissioner Lynch which would have delayed relief in the extremely constrained 909 NPA.⁶ The FCC should use this opportunity not merely to deny the SO Petition as clearly deficient, but to also order the CPUC to adopt a relief plan for the 310 NPA.

I. THE PROPOSED SERVICE SPECIFIC OVERLAYS FAIL ON LEGAL AND POLICY GROUNDS AND SHOULD BE REJECTED

Verizon Wireless, along with the rest of the wireless industry, has opposed, with limited exception, any attempts to segregate its services into service specific or technology specific overlays.⁷ For the reasons identified here, Verizon Wireless encourages the FCC to reject the latest CPUC proposal.

A. Any SO Should Not Apply to Cellular, PCS Services or Paging

The CPUC proposal unreasonably includes paging companies among the services to be moved to the SOs. Inclusion of paging companies is problematic since the CPUC also

⁵ See D.03-10-060 (October 16, 2003), pp. 19-20.

⁶ On November 13, 2003, the CPUC adopted the Proposed Decision to implement an area code split in the 909 NPA. Even with this action, the 909 NPA is likely to reach total exhaust before the final implementation in February 2005. The SO Petition was specifically cited in Commissioner Lynch's Alternate Decision, which argued for delaying area code relief implementation. See AD in R.95-04-043, I.95-04-044 (May 6, 2003).

⁷ Wireless carriers generally supported a temporary, wireless-first overlay concept in 2000 with certain conditions, called a Phased-In Overlay ("PIO"). It was intended to bridge the period during which wireless carriers were unable to take numbers from thousand block number pools to meet their customer demands. The proposal incorporated an end to the transitional scheme at the onset of thousand-block number pooling ("TBNP" or "pooling"). See, e.g., Letter from Anne E. Hoskins, Verizon Wireless, to Yog R. Varma, Deputy Chief, Common Carrier Bureau, dated November 21, 2000.

proposes, without providing detail, to take back existing paging customers' telephone numbers.⁸ Paging companies offer geographically sensitive services that will be harmed by taking-back customers' telephone numbers. The CPUC has wholly failed to justify why paging services should now be placed into a SO and subjected to take-backs.

Verizon Wireless believes that the CPUC does not intend to include customers of cellular and PCS providers in the SOs. However, the language of the Petition is unclear.⁹ Thus, Verizon Wireless urges the FCC to request that the CPUC immediately confirm, in its reply comments in this proceeding, that its proposal does not include CMRS, cellular, or PCS customers as part of the services provided out of an SO. If the current proposal in fact seeks to place competitive wireless services into separate NPAs to preserve the underlying NPA for use by wireline carriers and their customers, it is wrongheaded and runs afoul of the FCC's attempts to foster competition between wireless and wireline services.¹⁰

B. The CPUC Petition Does Not Satisfy The FCC's Standards

The FCC set forth eight criteria for state commissions seeking delegated authority to implement SOs.¹¹ The CPUC's petition provided very little detail about how the proposed

⁸ CPUC Petition, p. 6.

⁹ CPUC Petition, p. 2.

¹⁰ The FCC has again affirmed the importance of wireless to wireline competition in the latest *Order* governing Local Number Portability ("LNP"). Telephone Number Portability, *Memorandum Opinion and Order and Further notice of Proposed Rulemaking*, CC Docket No. 95-116, Released November 10, 2003, at ¶¶ 9, 27. By refusing to artificially limit the scope of LNP, the FCC acknowledges that wireless carriers and wireline carriers are competitors and must be allowed to compete without handicapping the wireless industry with artificial and discriminatory restrictions. SOs are now an outdated concept because they no longer make sense in a competitive environment in which wireless carriers must be able to fully participate in thousands block number pooling and LNP with wireline carriers. The ability to share numbering resources and port them within the same NPA requires that wireless carriers not be segregated into their own exclusive-use NPAs.

¹¹ They are: (1) the technologies or services to be included in the proposed specialized overlay ("SO," the collective term for service-specific and technology specific overlays); (2) the geographic area to be covered; (3) whether the SO will be transitional; (4) when the SO will be implemented and, if a transitional SO is proposed, when the SO will become an all-services overlay; (5) whether the SO will include take-backs; (6) whether there will be 10-digit dialing in the SO and the underlying area code(s); (7) whether the SO and

SOs would be implemented, for what purpose and for what benefit. Indeed, the CPUC Petition only minimally addresses the criteria and provides insufficient basis to justify a grant of authority. In addressing the criteria in the *Third NRO Order*, any state seeking to impose an SO must demonstrate that the benefits will outweigh the costs and that the proposed SO would be superior to implementation of an all-services overlay.¹² When the FCC removed the blanket prohibition against SOs, it opened the door for states to use this tool only in limited circumstances where the proposals are tailored to minimize costs and burdens on wireless customers and carriers and where a substantial conservation benefit can be achieved.¹³ The CPUC has failed to address critical issues identified in the *Third NRO Order*, and has failed to meet its burden to justify its request. While the previous section of these comments addressed the shortcomings of the CPUC's proposals with respect to its selection of services subject to the SO, the balance of these comments address two additional criteria, take-backs and the geographic span of the SOs, and how the CPUC Petition fails to meet the FCC's standard for SOs.

C. The CPUC Has Not Justified the Need For Take-backs for Paging Services

As briefly discussed above, the CPUC proposed to take-back numbers assigned to existing paging customers without any analysis of the detrimental impact this will have on this declining industry segment. The paging industry is a mature industry that is experiencing little to no overall growth. No small part of the loyalty of paging customers is tied to the entrenched need to maintain the same telephone number for their profession or

underlying area code(s) will be subject to rationing; and (8) whether the SO will cover an area in which pooling is taking place. *Third NRO Order* at ¶ 81.

¹² *Third NRO Order* at ¶¶ 80-81.

¹³ *See Third NRO Order* at ¶¶ 80-94.

business and the geographic association of that number to their home or business. Requiring these customers to give back their telephone numbers will irreparably harm the paging industry, including Verizon Wireless Messaging Services, and its customers, with no commensurate NPA relief benefit for any of the underlying NPAs. Because of the minimal growth in the paging industry, demand for service by paging customers is not driving exhaust – but the numbers these customers do use are important to the continued viability of the paging business. There is insufficient basis in the CPUC petition to justify burdening the paging industry with take-backs. The paging industry and its customers should not bear the burdens imposed by take-backs in order to meet the needs of other consumers, needs currently unmet because the CPUC, until recently, has avoided its responsibility to order timely area code relief.¹⁴

Take-backs also pose burdens to telematics customers and their providers. The FCC indicated that take-backs from non-geographically sensitive services might be feasible.¹⁵ As OnStar and Verizon Wireless have informed the FCC since the release of the text of the *Third NRO Order*, telematics providers *do* use geographically based numbers allocated to them from wireless carriers.¹⁶ Customers of telematics providers will face similar, and in some cases greater, challenges for reprogramming the devices within vehicles with new telephone numbers.

In order to prevent needless harm to consumers due to take-backs, the FCC required states proposing to use take-backs to include a strong showing that the consumer and

¹⁴ On November 13, 2003, the CPUC voted to implement a geographic split of the 909 NPA.

¹⁵ *Third NRO Order* at ¶82.

¹⁶ See *Ex Parte Letter* from William L. Ball, OnStar, to William F. Caton, Acting FCC Secretary, CC Docket No. 99-200, dated February 14, 2002. See *Opposition of Verizon Wireless*, CC Docket No. 99-200, NSD File No. L-02-03, dated June 14, 2002. The non-geographically based numbers used by telematics providers are typically 500 numbers.

industry costs associated with take-backs are outweighed by their optimization benefits.¹⁷ Conclusory claims are not enough. State commissions are required to specifically demonstrate that the negative effects of take-backs will be mitigated by the benefits in the particular geography by showing, for example, that: “(1) consumers, particularly subscribers that would be required to relinquish their telephone numbers, support such a measure; (2) the state will provide incentives for providers and their current customers to relinquish their numbers in the underlying area code; and (3) a phased-in approach will help ease the cost burden on customers and service providers.”¹⁸ The CPUC’s petition must be denied because it did not present any evidence to satisfy these FCC criteria regarding take-backs of telephone numbers from paging carriers or other services.

D. NANP Conservation Is Not Served By the SO Proposal

From a NANP conservation perspective, the CPUC’s SO proposal would consume two additional NPAs and provide no additional benefit. The proposal seeks to cover the entire state with two SOs. The geography of the two SOs is too large and diverse to make sense from a numbering conservation perspective. First, the 378 rate centers in the northern half of the state and the 360 rate centers in the southern half of the state cannot be adequately supplied with numbering resources, including supplying full NXX blocks for paging carriers and other non-pooling capable carriers, from the approximately 1568 (800 NXX in each NPA minus N11 codes, 555, 976, 950, and other un-assignable NXXs) available NXXs obtained by opening two new NPAs.¹⁹ Even if the CPUC did not seek to provide new thousands blocks or full codes for every rate center, it would need to predict

¹⁷ *Third NRO Order* at ¶ 90.

¹⁸ *Third NRO Order* at ¶ 90.

¹⁹ Some NXXs, such as the N11 abbreviated dialing codes and toll free numbers, are not available for use as customers’ telephone numbers.

growth patterns and risk providing too few numbers in some areas and too many numbers in others. The CPUC does not need to provide relief across such a large geography. All that is needed is relief for any NPAs still at risk of exhausting within the next year. The two SOs, if structured as outlined in the CPUC petition, would do little to prevent the need to provide additional relief by opening new NPAs for fast growing areas of California because the SO does not appear to provide sufficient, targeted relief.

Further, the decision to place some services in the SOs necessarily involves a calculus of redirecting sufficient demand to provide long-term relief for the carriers and services remaining in the underlying NPAs. There is no evidence or empirical data from the CPUC petition that supports segregating the proposed mix of services into their own exclusive use SOs or that demonstrates whether dispersing their numbers across such a large geography effectively solves any problems in the long term, rather than delaying the inevitable need for relief in some high growth areas.

II. AREA CODE RELIEF IS NEEDED IN CALIFORNIA

Until the CPUC's recent action to implement relief in the 909 NPA, the CPUC had avoided area code relief through aggressive rationing, reclamation and pooling. However, where, such as in the 909 and the 310 NPAs, the time has come for conventional area code relief, the FCC should not permit the CPUC to avoid relief by proposing or implementing SO proposals such as the current proposal.²⁰ The FCC stated in the *Third NRO Order*, "We

²⁰ The CPUC's own Audit Reports supported the need for area code relief in the 909 and 310 NPAs. For example, The 310 Audit Report, submitted February 16, 2001 concluded, "Based on the audit findings, TD reaches three conclusions. First, carriers did not deliberately misreport their TN utilization data for the *March 310 Report*. Second, the audit authenticates the utilization data that carriers submitted for the *March 310 Report* except for the recommended TN adjustments as pointed out in this report. Third, the additional TNs found are not sufficient to extend the life of the 310 area code." 310 Audit Report in R.95-04-043 at 5 (2001).

believe that, to optimize their value, SOs should not be implemented when the underlying NPA has a projected life span of less than one year.”²¹

Here, high growth areas are in desperate need of relief and clearly are not saved by this SO proposal or any others.²² The CPUC’s own staff said it best: “The SOs will not save the 310 or 909 area codes from an area code change because (1) No new numbers will be reclaimed from these two area codes for the SO; (2) The FCC may not rule on the petition before these area codes exhaust.”²³ This latest CPUC petition is a thinly veiled attempt to postpone full area code relief when it is critically needed. Now that the CPUC has finally ordered relief for the 909 NPA, it should not be allowed to delay relief for the 310 NPA, which poses similar exhaust potential created by consumer demand, based on the alleged benefits of an SO. In the recent Order regarding the CPUC’s petition to raise the contamination threshold in California, the FCC stated, “We emphasize that our action in this order is intended to assist the California Commission as it implements area code relief in the 310 and the 909 NPAs, and should not be used to justify delaying this much needed relief.”²⁴ Nevertheless, instead of ordering relief for the 310 NPA in October, the CPUC voted to take a “wait and see” approach for another six months.²⁵

Further, the CPUC has not explained how the proposed SO is superior to implementation of an all-services overlay (or even the geographic splits supported by their own staff and the Draft Decisions before them) as required by the FCC’s *Third NRO*

²¹ *Third NRO Order* at ¶ 85.

²² According to the most recent report given by the North American Numbering Plan Administrator (“NANPA”) during the November 5, 2003 North American Numbering Council (“NANC”) meeting, the 310 and 909 NPAs will exhaust in less than one year. See NPA Exhaust Report submitted by NANPA to the NANC November 5, 2003, www.nanc-chair.org.

²³ Memorandum from H. Mickiewicz and S. Yun to the California Commission regarding Specialized Overlays dated September 30, 2003 at 5.

²⁴ *Numbering Resource Optimization*, Order, FCC 03-196 (Aug. 11, 2003) (“25% Contamination Order”) at ¶11.

Order.²⁶ Without real relief, the consumers in areas of California where growth is strongest will be denied telephone numbers from their local area and/or from their provider of choice because of the CPUC's failure to provide timely area code relief.

Thus, the FCC should deny the CPUC's petition and reaffirm the CPUC's responsibility under the FCC's existing NRO Orders to provide conventional area code relief when and where needed. To this end, the FCC delegated authority to requesting states to enable them to engage in selected number conservation initiatives, but steadfastly maintained the need for states to engage in timely area code relief. The FCC firmly stated its position:

The grants of authority herein are not intended to allow state commissions to engage in number conservation measures to the exclusion of, or as a substitute for, unavoidable and timely area code relief. Although we are giving the state commissions tools that may help to prolong the lives of existing codes, the state commissions continue to bear the obligation of implementing area code relief when necessary, and we expect the state commissions to fulfill this obligation in a timely manner. Under no circumstances should consumers be precluded from receiving telecommunications services of their choice from providers of their choice for want of numbering resources. For consumers to benefit from the competition envisioned by the 1996 Act, it is imperative that competitors in the telecommunications marketplace face as few barriers to entry as possible. If the state commissions do not fulfill these obligations in a timely manner, we may be compelled to reconsider the authority being delegated to the states herein.²⁷

The CPUC has not always acted consistent with its grant of delegated authority, delaying relief even after its own audit reports confirmed the need for relief and after the FCC recently admonished it to provide relief.²⁸ Given the urgent need for numbering relief in California, the FCC should require the CPUC to implement the relief measures supported by its own Draft Decisions immediately and to promote expedited implementation where

²⁵ See D.03-10-060.

²⁶ *Third NRO Order* at ¶ 81.

²⁷ See *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd. 7574 (2000) ("NRO Order") at ¶ 7.

needed to avoid exhaust. The public interest will be best served if the FCC denies the CPUC's request for authority to implement SOs and instead orders the CPUC to implement relief in the 310 NPA.

III. CONCLUSION

For the reasons explained above, the Commission should deny the CPUC's request for authority to implement two SOs in California and instead order the CPUC to implement its relief plans.

Respectfully submitted,

VERIZON WIRELESS

By:

A handwritten signature in black ink that reads "John T. Scott, III". The signature is written in a cursive style with a horizontal line underneath the name.

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November 17, 2003

²⁸ See *infra* footnote 20. See 25% Contamination Order at ¶ 11.

Certificate of Service

I hereby certify that on this 17th day of November copies of the foregoing “Opposition of Verizon Wireless” in CC Docket 99-200 was sent to the following parties:

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A handwritten signature in black ink, reading "Sarah E. Weisman". The signature is written in a cursive style with a horizontal line underneath the name.

Sarah E. Weisman